

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LIBERTY CORPORATE CAPITAL, LTD.,

Plaintiff

v.

DELTA PI CHAPTER OF LAMBDA CHI
ALPHA, JOHN FERRELL CASSADY,
LINWOOD BRADY LONG,
BRIAN THOMAS MCELROY,
ROBERT LAWRENCE OLSON, ALSO KNOWN
AS ROBERT S. OLSON, JR., AND
JOHN LEE MYNHARDT

Defendants

Civil Action No. 1:09-CV-765

AFFIDAVIT OF NOLAN C. BURKHUSE

The Affiant, Nolan C. Burkhouse, counsel for Plaintiff, Liberty Corporate Capital, Ltd., after being duly sworn, deposes and states as follows:

1. I am an attorney in the law firm of Paul Frank + Collins P.C. and counsel for the Plaintiff, Liberty Corporate Capital, Ltd. ("Liberty"), in the above captioned case. The statements set forth in this Affidavit are within my personal knowledge and are true and correct.
2. This Affidavit is executed in accordance with Rule 55 of the Federal Rules of Civil Procedure for the purpose of supporting Liberty's Request to the Clerk for an Entry of Default Against Defendant Delta Pi Chapter of Lambda Chi Alpha ("Chapter"), filed concurrently herewith.
3. Liberty filed its Complaint for Declaratory Judgment in this Court against the Chapter and others on October 2, 2009. *See* Docket # 1, which is incorporated herein by reference.

4. On November 2, 2009, Liberty requested the Chapter execute a Waiver of Service of Summons pursuant to Rule 4 of the Federal Rules of Civil Procedure, by sending a letter to the Chapter's then-President, Robert Hobbs. A true and correct copy of the November 2, 2009 letter is attached hereto as Exhibit A.
5. On December 7, 2009, the Chapter, by its new President Christopher Markwood, executed the Waiver of Service of Summons.
6. On December 14, 2009, Liberty filed in this Court the Chapter's Waiver of Service of Summons and served copies on all parties. *See* Docket # 11, which is incorporated herein by reference and is attached as Exhibit B for the Court's convenience.
7. Pursuant to F.R.C.P. Rule 4(d)(3), the Chapter's response to Liberty's Complaint was due on January 4, 2010.
8. As of the filing of this Affidavit, the Chapter has failed to file an answer or otherwise respond or enter a defense to the allegations of Liberty's Complaint. Moreover, no one has entered an appearance on the Chapter's behalf.
9. Defendant Chapter is not in military service and is not an infant or incompetent.

FURTHER AFFIANT SAYETH NOT.

Dated at Burlington, Vermont this 4th day of March 2010.


Nolan C. Burkhouse

STATE OF VERMONT)
COUNTY OF CHITTENDEN, SS.)

The foregoing Affidavit was acknowledged, subscribed and sworn to before me this 4th day of March, 2010, by Nolan C. Burkhouse, to be his free act and voluntary deed.

My Commission expires: 2-10-2011


Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2010, I electronically filed the above *AFFIDAVIT OF NOLAN C. BURKHOUSE*, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Andrew Fitzgerald, Esq. – afitzgerald@sandflaw.com
Stanley B. Green, Esq. – sgreen@sandflaw.com
Michael Scott Petty, Esq. – mpetty@michaelpettylaw.com
Richard L. Pinto, Esq. – rpinto@pckb-law.com

and I hereby certify that I have mailed the document to the following non-CM/ECF participants:

Mr. A.L. Butler Daniel, Esq.
1133 Military Cutoff Road, Suite 210
Wilmington, NC 28405

Mr. Christopher Markwood
President
Delta Pi Chapter, Lambda Chi Alpha
2975 Campus Box
Elon College
Elon, NC 27244-2009

Mr. Gregory A. Wendling, Esq.
426 West Friendly Avenue, Suite A
Greensboro, North Carolina 27401
Attorney for Brian McElroy

Jim Phillips, Esq. and John Buford, Esq.
Brooks Pierce Law Firm
2000 Renaissance Plaza
230 North Elm Street
Greensboro, NC 27401
Attorneys for Linwood Brady Long

DATED: March 4, 2010

Respectfully submitted,

/s/ Nolan C. Burkhouse
Nolan C. Burkhouse, Esq.
Paul Frank + Collins P.C.
nburkhous@pfclaw.com

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